

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TAMMY N. BRUDNAK, Plaintiff	:	CIVIL ACTION – LAW
	:	JURY TRIAL DEMANDED
vs.	:	
	:	HONORABLE JAMES KNOLL
ALLENTOWN SCHOOL DISTRICT and	:	GARDNER
MARIO TRACA,	:	HONORABLE ARNOLD C.
Defendants	:	RAPOPORT
	:	
	:	NO: 05-2159

**TRIAL BRIEF OF DEFENDANT, MARIO TRACA**

**A. List of exhibits:**

1. December 22, 2003 Memo from Sabo to Rossi regarding meeting with Florice Brudnak
2. Secondary school Student Complaint Form – Sexual Harassment
3. January 16, 2004 letter from Rossi to Traca
4. April 16, 2004 letter from Sabo to Brudnak
5. Mentor Selection information from ASD
6. Undated statement of Mario Traca
7. Plaintiff's school transcript for 1997-1998 and 1998-1999
8. Plaintiff's school transcript for 2000-2001, 2001-2002 and 2002-2003
9. Absent/Tardy totals by Calendar Period for 2001-2002
10. Absent/Tardy totals by Calendar Period for 2002-2003
11. Absent/Tardy totals by Calendar Period for 2003-2004
12. Student Transcript 2001-2004
13. Allentown School District Sexual Harassment Policy

**B. List of Name, Address and field of expertise of each expert witness**

None.

**C. C.V. for each expert witness**

None.

**D. List of name and address of each fact witness to be called at trial, together with a brief statement of the nature of his or her expected testimony**

Mario Traca: Defendant. Mr. Traca denies any sexually discriminatory conduct and denies that he violated Ms. Brudnak's constitutional rights.

Rosalee Sabo – Former Principal at Dieruff High School – conducted investigation into complaints made by Ms. Brudnak.

Jessica Hernandez – former classmate of Plaintiff's

Gessenia Hernandez – former classmate of Plaintiff's

Carl Walters – teacher in Health and Physical Education department – denies witnessing any inappropriate conduct

Keith Brader – teacher in Health and Physical Education department – denies witnessing any inappropriate conduct

Manar Makhoul – former classmate of Plaintiff- denies witnessing any inappropriate conduct

Evelyn Rossi – Administrator – Involved in the investigation into Plaintiff's complaints

Linda Cruttenden - – teacher in Health and Physical Education department – denies witnessing any inappropriate conduct

Michael Marcks- Assistant Principal at Dieruff High School – involved in investigation of Plaintiff's complaints

Melvin Riddick, AEA President – involved in investigation of Plaintiff's complaints

**E. Itemized statement of claimant's damages and/or other relief sought:**

Without admitting or denying same, Defendant relies upon statement made by Plaintiff as to her damages.

**F. A statement of any anticipated significant and/or unique legal and procedural issues on which the court will be required to rule, together with counsel's single best authority on each such issue.**

This claim is plead under the Equal Protection Clause of the Fourteenth Amendment.

Plaintiff has failed to demonstrate that the treatment she received was, in fact, different from the treatment received by other similarly situated individuals. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985).

Plaintiff "must show intentional discrimination against him because of his membership in a particular class, not merely that he was treated unfairly as an individual." Poli v. SEPTA, 1998 U.S. District LEXIS 9935 (E.D. Pa., 1998).

In order to sustain a claim for violation of a constitutional right to bodily integrity, a Plaintiff must produce evidence that the alleged conduct "shocks the conscious". Collins v. City of Harker Heights, 503 U.S. 115, 125-128, 117 L. Ed.2d 261, 112 S. Ct. 1061 (1992).

Under the Harlow v. Fitzgerald standard, a governmental official sued in his individual capacity is entitled to qualified immunity in any of three circumstances: (1) if the conduct attributed to him is not prohibited by federal law; (2) where the conduct is prohibited by federal law, the Plaintiff's right not to be subjected to such conduct by defendant was not clearly established at the time of the conduct; or (3) if the defendant's action was "objectively, legally reasonable...in light of the legal rules that were clearly established at the time it was taken". Harlow v. Fitzgerald, 457 U.S. 800, 819 (1981).

**G. Names and addresses of the parties at the time the cause of action arose and presently**

Mario Traca  
1343 Montrose Ave.  
Bethlehem, PA 18018

**H. Name, address and telephone number of trial counsel, and if applicable, the name and telephone number of the firm with which he or she is affiliated**

Robin B. Snyder, Esquire  
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**I. Proposed Voir Dire questions**

See separately filed document.

**J. Proposed verdict slip**

See separately filed document.

**K. Any other matters of importance for the efficient trial of this case.**

The Defendants have filed motions for summary judgment which are outstanding.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

By: /s/ Robin B. Snyder, Esquire

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Attorneys for Defendant, Mario Traca

**CERTIFICATE OF SERVICE**

I, Robin B. Snyder, Esquire, do hereby certify that a true and correct copy of the foregoing Trial Brief was served upon all parties by electronic filing on the 22<sup>nd</sup> day of August, 2006 at the following addresses:

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Respectfully submitted,

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